

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF: Valley Machining Co d/b/a Valley Machining Company & VMC SIOUX COUNTY, IOWA	ADMINISTRATIVE CONSENT ORDER NO. 2015-FP- 01
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TO: Valley Machining Company
Joe E. Van Tol, President
1250 22nd Ave
P.O. Box 155
Rock Valley, IA 51247

I. SUMMARY

This Administrative Consent Order (Order) requires Valley Machining Co d/b/a Valley Machining Company & VMC (VMC) to comply with the provisions in Section V of this Order.

Questions regarding this Order should be directed to:

Relating to technical requirements:
Bryon Whiting
Iowa Department of Natural Resources
Field Office #3
1900 N. Grand
Spencer, IA 51301
Ph: (712) 262-4177

Relating to legal requirements:
Carrie Schoenebaum, Attorney II
Iowa Department of Natural Resources
502 E. 9th Street
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph:(515)725-8244

Payment of penalty to:
Iowa Department of Natural Resources
502 E. 9th Street
Des Moines, Iowa 50319-0034
Attn: Carrie Schoenebaum

II. JURISDICTION

This Order is issued pursuant to Iowa Code §455B.279 which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code §§455B.261 through 455B.281 or the rules adopted pursuant thereto, and Iowa Code §455B.109 and 567

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Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. VMC is a manufacturer of custom-machined products and assemblies specializing in precision metal fabrication for hydraulics, agricultural, electric motors, food processing, oil field, railroad and heavy equipment industries. VMC was established in 1980 and currently has 85 full-time employees. VMC is the deed holder to two parcels of land (0321452003 and 0321476006) located at SE 1/4 of section 21 T97N, R46W, Rock Township, Sioux County, IA. This property is locally known as 1250 22nd Avenue, Rock Valley, Iowa (hereafter both properties will be referred to as VMC's property). According to the Sioux County Assessor's database VMC's property has undergone 3 building expansions - in 1994, 1995 and 2012. Portions of this property are in the flood plain and floodway of Rogg Creek. This portion of Rogg Creek drains more than 12 square miles.

Past Violations and History

2. On July 20, 2005, Bryon Whiting, Senior Environmental Specialist with the Department, received a complaint alleging that VMC had placed fill on the flood plain of Rogg Creek. This resulted in the redirection of the natural flow of flood waters which caused drainage problems on neighboring property because flood flows that used to spread out over the flood plain were now flowing towards the adjoining property.

Upon receipt of the complaint, Mr. Whiting went to VMC's property to investigate. Once on site, he observed fill dirt which had been placed in the portion of the flood plain that was in the floodway adjacent to Rogg Creek (hereafter this location will be referred to as the floodway). This fill had been placed from the Highway 18 bridge towards VMC's building. Mr. Whiting took pictures to document his observations. VMC did not receive a flood plain development permit from the Department to place the fill in the floodway.

3. On July 25, 2005, the Department sent VMC a Notice of Violation (NOV), via certified mail for placing fill in the floodway of Rogg Creek without the required permit from the Department. This NOV requested that VMC submit to the Department an "as-built" joint application for the project.¹ A joint application was attached to this NOV and the relevant Department rules were summarized. This NOV also stated that failure to submit a complete joint application to the Department may result in formal enforcement which may involve a monetary penalty.

4. On September 21, 2005, a joint application was received by the Department.

¹ Joint Application is the terminology used to refer to the application required to be submitted to the Department to receive a flood plain development permit which authorizes construction in or on a flood plain in Iowa. This application is shared amongst the Department's flood plain development program, the sovereign lands program, and the U.S. Army Corps of Engineers.

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5. On April 10, 2006, Wayne Wiksell, an Environmental Engineer with the Department, sent VMC an e-mail regarding its joint application. Mr. Wiksell indicated that because the proposed fill in the floodway could not be approved, the Department would be denying this application.
6. On May 6, 2006, the Department sent VMC a letter in response to its joint application for existing fill in the floodway of Rogg Creek. This letter informed VMC that the project did not conform to Department rules and therefore its application was denied.
7. On June 7, 2006, Mr. Whiting met with Ralph Bousema, Material Manager of VMC, VMC's Plant Manager and the City of Rock Valley's Zoning Administrator. VMC discussed its desire to do what the Department required in order to achieve compliance with the law. To do this, VMC agreed to remove enough fill to achieve base elevation equal to the opposite (east) side of Rogg Creek and take a 50 foot swath from the edge of the stream bank at the base elevation.
8. On July 10, 2006, the Department received a joint application from VMC for excavation of the fill dirt from the floodway. This excavation of dirt was to assist in maintaining the floodway.
9. On June 26, 2007, the Department sent VMC a letter approving its joint application for excavation within 100 feet of the stream on the flood plain of Rogg Creek.

Present Violations

10. On June 26, 2012, the Department received a complaint alleging VMC was constructing and/or developing in the floodway of Rogg Creek. The complainant had spoken to the flood plain section of the Department and based on that conversation it appeared the activity was taking place within the flood plain without the required authorization.
11. On July 3, 2012, Mr. Whiting went to the site to investigate. Once on site, Mr. Whiting spoke to Mr. Bousema. Mr. Bousema indicated that VMC was expanding its operation and was in the process of constructing a building that would run parallel to Rogg Creek. Mr. Bousema said that he was not sure if the project had received the required authorization from the Department but to find out Mr. Whiting should speak with the General Contractor, Mark Fischer of Fischer Masonry Construction. Mr. Fischer indicated that he did not get authorization from the Department. Mr. Whiting informed Mr. Fischer such authorization was required and briefed him on the relevant law. Mr. Whiting also provided Mr. Fischer with a copy of the Department's joint application.
12. On July 9, 2012, the Department sent a NOV to Mr. Fisher for failure to obtain a flood plain development permit and failure to obtain a storm water National Pollution Discharge Elimination System (NPDES) permit. VMC was copied on this NOV.
13. On July 12, 2012, the Department received an as-built joint application for the above discussed project from VMC.

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14. On August 1, 2012, the City of Rock Valley issued a building permit to VMC for a 47,495 square foot addition to its machine shop.

15. On July 1, 2013, the Department sent VMC a letter in response to its as-built joint application for the construction of a building in the floodway of Rogg Creek. This letter informed VMC that the project does not conform to Department rules and therefore its application was denied. This letter discussed the relevant law, provided ways in which the construction could conform to Iowa law and explained that the decision could be appealed within 30 days of the date of mailing the decision. It also explained that VMC may submit a revised joint application at any time. This permit denial was not appealed.

16. On April 23, 2014, the Department sent VMC a letter reminding it that the joint application received by the Department on July 17, 2012, was denied. This letter discussed the relevant law and provided ways in which the construction project could conform to the criteria of Iowa law and explained that VMC may submit a revised joint application at any time.

17. On September 8, 2014, Mr. Whiting e-mailed Tom VanMaanen of the City of Rock Valley requesting information concerning the issuance of building permits and flood plain development permits by the City. Mr. VanMaanen responded that the City met with VMC prior to the construction of the building and was told by VMC that Mr. Fischer, the General Contractor, had obtained all the necessary permits from the Department. According to Mr. VanMaanen, VMC told the City that because the elevation was above the flood plain, it had not submitted a joint application to the Department to develop within the flood plain.

18. On March 4, 2015, Mr. Whiting went on site and confirmed that VMC had indeed constructed the above discussed building in the floodway without a flood plain development permit from the Department.

IV. CONCLUSIONS OF LAW

1. Iowa Code §455B.275(3) requires that approval be obtained from the Department if a person desires to construct or maintain an obstruction or deposit on any floodway or flood plain as defined in Iowa Code §455B.261. Iowa Code §455B.275(1) prohibits the erection, use or maintenance of obstructions or deposits on the floodway or flood plain which adversely affects the efficiency of or unduly restricts the capacity of the floodway and declares them to be public nuisances.

2. Iowa Code §455B.275(8) requires the Environmental Protection Commission (Commission) to establish regulatory thresholds by administrative rules. The regulatory thresholds are set forth in 567 IAC chapter 71. More specifically, 567 IAC 71.4 and 71.12(2) require Department approval for the construction, operation and maintenance of levees or dikes, and miscellaneous structures, obstructions or deposits on the floodway or flood plain of any river or stream draining more than ten square miles in rural areas. The above stated facts show non-compliance with this provision.

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3. 567 IAC 71.7(2) states “[t]he thresholds for buildings and associated fill in subrule 71.7(1) shall apply to rural areas within 2 miles of municipal corporate limits.” 567 IAC 71.7(1) states

approval is required for construction, use and maintenance of buildings in the floodway or flood plain of any stream draining more than 2 square miles at the location of the structure as follows:

a. New construction including fill for development purposes. Approval is required for construction of any new building. New construction includes replacement or relocation of an existing building. New construction also includes placement and grading of fill materials in a manner that would create an elevated building site.

Approval from the Department was not obtained by VMC prior to placing fill in the flood plain or constructing in the flood plain. Therefore, the above stated facts demonstrate non-compliance with this provision.

4. The above-summarized facts establish that the foregoing statutory and rule provisions have been and are being violated and support the additional conclusion that the deposits and obstructions described herein constitute a public nuisance.

V. ORDER

THEREFORE, the Department orders and VMC consents to do the following:

1. By June 1 2017, VMC shall obtain a flood plain development permit authorizing the construction of the above discussed building located in the flood plain of Rogg Creek;
2. In the future VMC shall comply with all laws in the state of Iowa regarding construction or development within a flood plain or floodway; and
3. VMC shall pay a penalty in the amount of \$4,000.00 within 30 days of the date the Director signs this Order.

VI. PENALTY

1. Iowa Code §455B.279(2) authorizes the assessment of civil penalties of up to \$500.00 per day per violation of flood plain laws, rules or permits.
2. Iowa Code §455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties; 567 IAC chapter 10. Pursuant to these provisions the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Order with a penalty of \$4,000.00. The administrative penalty is determined as follows:

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- a. Economic Benefit. VMC has enjoyed long term financial savings by proceeding with flood plain construction prior to obtaining approval. However, VMC will incur significant costs to remedy the violations which are the subject of this this Order. Therefore, no amount is assessed for this factor.
- b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, moderate civil penalties are authorized by statute. To the extent that obstructions in the floodway (the area reserved to convey flood flows) increase the water surface profile, VMC's actions threaten public safety. Further, the integrity of the flood plain regulatory program is threatened in that VMC's actions encourage others to disregard approval requirements. Unauthorized flood plain construction and maintaining that construction has persisted a significant amount of time after the Department informed VMC that the construction did not conform to Department criteria and a flood plain development permit could not be issued. Further, even after VMC was informed of the relevant law it proceeded to construct in the floodway. These actions show a complete disregard for the regulations pertaining to flood plains and floodways. For these reasons, \$500.00 per day could be assessed for this factor for continuous violations over a period of more than one year. The Department assesses \$2,000.00 for this factor.
- c. Culpability. VMC has been notified in writing regarding its responsibility to comply with permit requirements for construction in the flood plain but has persisted in violating these requirements. Moreover, VMC has had numerous conversations in person with the Department in which the Department has informed VMC of the rules and that its actions were violating the law. Despite VMC's knowledge that construction in the flood plain without authorization from the Department was illegal it proceeded with the construction of a building in the flood plain. For this reason, \$500.00 per day could be assessed for this factor for the above-described continuous violations over a period of more than one year. The Department assesses \$2,000.00 for this factor.

VII. WAIVER OF APPEAL RIGHTS

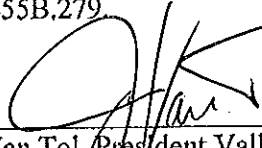
Iowa Code section 455B.279 and 561 IAC 7.4(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This Order is entered into knowingly by and with the consent of VMC. By signature to this Order, all rights to appeal this Order are waived.

VIII. NONCOMPLIANCE

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of additional administrative penalties pursuant to an administrative order or

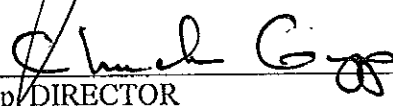
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referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code §455B.279.



Joe E. Van Tol, President Valley Machining Co

Dated this 24th day of
April, 2015.



Chuck Gipp, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 11th day of
May, 2015.

Field Office 3; Carrie Schoenebaum; Bryon Whiting; EPA; III.A.1

